

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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BILL DRAFT 2009-RWz-29 [v.6] (04/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: DOT Powers and Duties Changes.

(Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING THE
3 POWERS AND DUTIES OF THE DEPARTMENT OF TRANSPORTATION.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 136-11 is repealed.

6 *current text of G.S. 136-11:*

7 **§ 136-11. Annual reports to Governor.**

8 *The Department of Transportation shall make to the Department of Administration, or to the Governor, a full*
9 *report of its finances and the physical condition of buildings, depots and properties under its supervision and*
10 *control, on the first day of July of each year, and at such other times as the Governor or Directors of the Budget*
11 *may call for the same.*

12 **SECTION 2.** G.S. 136-16.10 reads as rewritten:

13 **"§ 136-16.10. Allocations by Department Controller to eliminate overdrafts.**

14 ~~The Controller~~ Chief Financial Officer of the Department of Transportation shall allocate at
15 the beginning of each fiscal year from the various appropriations made to the Department of
16 Transportation for State Construction, State Funds to Match Federal Highway Aid, State
17 Maintenance, and Ferry Operations, sufficient funds to eliminate all overdrafts on State
18 maintenance and construction projects, and these allocations shall not be diverted to other
19 purposes."

20 **SECTION 3.** G. S. 136-17.2A(d) reads as rewritten:

21 "(d) In each fiscal year, the Department shall, as nearly as practicable, expend in a
22 distribution region an amount equal to that region's tentative percentage share of the funds that
23 are subject to this section and are available for that fiscal year. In any ~~consecutive seven-year~~
24 Transportation Improvement Plan period, the amount expended in a distribution region must be
25 between ninety percent (90%) and one hundred ten percent (110%) of the sum of the amounts
26 established under this subsection as the target amounts to be expended in the region for ~~those~~
27 seven years that period."

28 **SECTION 4.** G.S. 136-18(1) reads as rewritten:

29 **"§ 136-18. Powers of Department of Transportation.**

30 The said Department of Transportation is vested with the following powers:

31 (1) The authority and general supervision over all matters relating to the
32 ~~construction~~ construction, maintenance, and design of the State ~~highways,~~
33 transportation projects, letting of contracts therefor, and the selection of

1 materials to be used in the construction of State ~~highways~~ transportation
2 projects under the authority of this Chapter.

3 ..."

4 **SECTION 5.** G.S. 136-18(12b) reads as rewritten:

5 **"§ 136-18. Powers of Department of Transportation.**

6 The said Department of Transportation is vested with the following powers:

7 ...

8 (12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other
9 eligible debt-financing instruments to finance federal-aid highway projects
10 using federal funds to pay a portion of principal, interest, and related bond
11 issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National
12 Highway System Designation Act of 1995, Pub. L. 104-59). These bonds
13 shall be issued by the State Treasurer on behalf of the Department and shall
14 be issued pursuant to an order adopted by the Council of State under
15 G.S. 159-88. The State Treasurer shall develop and adopt appropriate debt
16 instruments, consistent with the terms of the State and Local Government
17 Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use
18 under this subdivision. Prior to issuance of any "GARVEE" or other eligible
19 debt instrument using federal funds to pay a portion of principal, interest,
20 and related bond issuance costs, the State Treasurer shall determine (i) that
21 the total outstanding principal of such debt does not exceed the total amount
22 of federal transportation funds authorized to the State in the prior federal
23 fiscal year; or (ii) that the maximum annual principal and interest of such
24 debt does not exceed fifteen percent (15%) of the expected average annual
25 federal revenue shown for the ~~seven-year~~ period in the most recently
26 adopted Transportation Improvement Program. Notes issued under the
27 provisions of this subdivision may not be deemed to constitute a debt or
28 liability of the State or of any political subdivision thereof, or a pledge of the
29 full faith and credit of the State or of any political subdivision thereof, but
30 shall be payable solely from the funds and revenues pledged therefor. All the
31 notes shall contain on their face a statement to the effect that the State of
32 North Carolina shall not be obligated to pay the principal or the interest on
33 the notes, except from the federal transportation fund revenues as shall be
34 provided by the documents governing the revenue note issuance, and that
35 neither the faith and credit nor the taxing power of the State of North
36 Carolina or of any of its political subdivisions is pledged to the payment of
37 the principal or interest on the notes. The issuance of notes under this Part
38 shall not directly or indirectly or contingently obligate the State or any of its
39 political subdivisions to levy or to pledge any form of taxation whatever or
40 to make any appropriation for their payment.

41 ..."

42 **SECTION 6.** G.S. 136-18(38) reads as rewritten:

43 **"§ 136-18. Powers of Department of Transportation.**

44 The said Department of Transportation is vested with the following powers:

45 ...

46 (38) To enter into agreements with municipalities, counties, governmental
47 entities, or nonprofit corporations to receive funds for the ~~purpose~~ purposes
48 of advancing right-of-way acquisition or the construction schedule of a
49 project identified in the Transportation Improvement Program. If these funds
50 are subject to repayment by the Department, prior to receipt of funds,
51 reimbursement of all funds received by the Department shall be shown in the

1 existing Transportation Improvement Program and shall be reimbursed
2 within ~~seven years of receipt.~~ the period of the existing Transportation
3 Improvement Program.

4 ..."

5 **SECTION 7.** G.S. 136-18(39) reads as rewritten:

6 **"§ 136-18. Powers of Department of Transportation.**

7 The said Department of Transportation is vested with the following powers:

8 ...

9 (39) To enter into partnership agreements with ~~the North Carolina Turnpike~~
10 ~~Authority,~~ private entities, and authorized political subdivisions to finance,
11 by tolls, contracts, and other financing methods authorized by law, the cost
12 of acquiring, constructing, equipping, maintaining, and operating
13 transportation infrastructure in this State, and to plan, design, develop,
14 acquire, construct, equip, maintain, and operate transportation infrastructure
15 in this State. An agreement entered into under this subdivision requires the
16 concurrence of the Board of Transportation. The Department shall report to
17 the Chairs of the Joint Legislative Transportation Oversight Committee, the
18 Chairs of the House of Representatives Appropriations Subcommittee on
19 Transportation, and the Chairs of the Senate Appropriations Committee on
20 the Department of Transportation, at the same time it notifies the Board of
21 Transportation of any proposed agreement under this subdivision. Any
22 contracts for construction of highways, roads, streets, and bridges which are
23 awarded pursuant to an agreement entered into under this section shall
24 comply with the competitive bidding requirements of Article 2 of this
25 Chapter.

26 ..."

27 **SECTION 8.** G.S. 136-18(40) reads as rewritten:

28 **"§ 136-18. Powers of Department of Transportation.**

29 The said Department of Transportation is vested with the following powers:

30 ...

31 (40) To expand public access to coastal waters in its road project planning and
32 construction programs. The Department shall work with the Wildlife
33 Resources Commission, other State agencies, and other government entities
34 to address public access to coastal waters along the roadways, bridges, and
35 other transportation infrastructure owned or maintained by the Department.
36 The Department shall adhere to all applicable design standards and
37 guidelines in implementation of this enhanced access. ~~The Department shall~~
38 ~~report on its progress in expanding public access to coastal waters to the~~
39 ~~Joint Legislative Commission on Seafood and Aquaculture and to the Joint~~
40 ~~Legislative Transportation Oversight Commission no later than March 1 of~~
41 ~~each year.~~

42 ..."

43 **SECTION 9.** G.S. 136-28.4 reads as rewritten:

44 **"§ 136-28.4. State policy concerning participation by disadvantaged minority-owned and**
45 **women-owned businesses in highway transportation contracts.**

46 (a) It is the policy of this State, based on a compelling governmental interest, to
47 encourage and promote participation by disadvantaged minority-owned and women-owned
48 businesses in contracts let by the Department pursuant to this Chapter for the planning, design,
49 preconstruction, construction, alteration, or maintenance of State ~~highways, roads, streets, or~~
50 ~~bridges~~ transportation infrastructure and in the procurement of materials for these projects. All
51 State agencies, institutions, and political subdivisions shall cooperate with the Department of

1 Transportation and among themselves in all efforts to conduct outreach and to encourage and
2 promote the use of disadvantaged minority-owned and women-owned businesses in these
3 contracts.

4 (b) At least every five years, the Department shall conduct a study on the availability
5 and utilization of disadvantaged minority-owned and women-owned business enterprises and
6 examine relevant evidence of the effects of race-based or gender-based discrimination upon the
7 utilization of such business enterprises in contracts for planning, design, preconstruction,
8 construction, alteration, or maintenance of State ~~highways, roads, streets, or bridges~~
9 transportation infrastructure and in the procurement of materials for these projects. Should the
10 study show a strong basis in evidence of ongoing effects of past or present discrimination that
11 prevents or limits disadvantaged minority-owned and women-owned businesses from
12 participating in the above contracts at a level which would have existed absent such
13 discrimination, such evidence shall constitute a basis for the State's continued compelling
14 governmental interest in remedying such race and gender discrimination in highway
15 transportation contracting. Under such circumstances, the Department shall, in conformity with
16 State and federal law, adopt by rule and contract provisions a specific program to remedy such
17 discrimination. This specific program shall, to the extent reasonably practicable, address each
18 barrier identified in such study that adversely affects contract participation by disadvantaged
19 minority-owned and women-owned businesses.

20 (b1) Based upon the findings of the Department's ~~Second Generation Disparity Study~~
21 ~~completed in 2004~~, 2009 study entitled "Measuring Business Opportunity: A Disparity Study of
22 NCDOT's State and Federal Programs" hereinafter referred to as "Study", the program design
23 shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in
24 the Study, and the Department shall implement a comprehensive antidiscrimination
25 enforcement policy. As appropriate, the program design shall be modified by rules adopted by
26 the Department that are consistent with findings made in the Study and in subsequent studies
27 conducted in accordance with subsection (b) of this section. As part of this program, the
28 Department shall review its budget and establish ~~annual~~ aspirational goals every three years,
29 not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged
30 minority-owned and women-owned businesses. These ~~annual~~ aspirational goals for
31 disadvantaged minority-owned and women-owned businesses shall be established consistent
32 with ~~federal methodology specified in the Study~~, methodology, and they shall not be applied
33 rigidly on specific contracts or projects. Instead, the Department shall establish
34 contract-specific goals or project-specific goals for the participation of such firms in a manner
35 consistent with availability of disadvantaged minority-owned and women-owned businesses, as
36 appropriately defined by its most recent Study, for each disadvantaged minority-owned and
37 women-owned business category that has demonstrated significant disparity in contract
38 utilization. Nothing in this section shall authorize the use of quotas. Any program implemented
39 as a result of the Study conducted in accordance with this section shall be narrowly tailored to
40 eliminate the effects of historical and continuing discrimination and its impacts on such
41 disadvantaged minority-owned and women-owned businesses without any undue burden on
42 other contractors. The Department shall give equal opportunity for contracts it lets without
43 regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as
44 defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

45 (c) The following definitions apply in this section:

- 46 (1) "Disadvantaged ~~business~~Business" has the same meaning as "disadvantaged
47 business enterprise" in 49 C.F.R. § 26.5 Subpart A or any subsequently
48 promulgated replacement regulation.
- 49 (2) "Minority" includes only those racial or ethnicity classifications identified by
50 a study conducted in accordance with this section that have been subjected to

1 discrimination in the relevant marketplace and that have been adversely
2 affected in their ability to obtain contracts with the Department.

3 (3) "Women" means a non-minority person born of the female gender.

4 (d) The Department shall report ~~semiannually~~annually to the Joint Legislative
5 Transportation Oversight Committee on the utilization of disadvantaged minority-owned
6 businesses and women-owned businesses and any program adopted to promote contracting
7 opportunities for those businesses. Following each study of availability and utilization, the
8 Department shall report to the Joint Legislative Transportation Oversight Committee on the
9 results of the study for the purpose of determining whether the provisions of this section should
10 continue in force and effect.

11 (e) This section expires August 31, ~~2010~~ 2014."

12 **SECTION 10.** G.S. 136-66.3 reads as rewritten:

13 **"§ 136-66.3. Local government participation in improvements to the State transportation**
14 **system.**

15 (a) Municipal Participation Authorized. – A municipality may, but is not required to,
16 participate in the right-of-way and construction cost of a State transportation improvement
17 approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in the
18 municipality or its extraterritorial jurisdiction.

19 (b) Process for Initiating Participation. – A municipality interested in participating in
20 the funding of a State highway improvement project may submit a proposal to the Department
21 of Transportation. The Department and the municipality shall include their respective
22 responsibilities for a proposed municipal participation project in any agreement reached
23 concerning participation.

24 (c) Type of Participation Authorized. – A municipality is authorized and empowered to
25 acquire land by dedication and acceptance, purchase, or eminent domain, and make
26 improvements to portions of the State transportation system lying within or outside the
27 municipal corporate limits utilizing local funds that have been authorized for that purpose. All
28 improvements to State transportation systems shall be done in accordance with the
29 specifications and requirements of the Department of Transportation.

30 ~~(c1) No TIP Disadvantage for Participation. — If a county or municipality participates in~~
31 ~~a State transportation system improvement project, as authorized by this section, or by~~
32 ~~G.S. 136-51 and G.S. 136-98, the Department shall ensure that the local government's~~
33 ~~participation does not cause any disadvantage to any other project in the Transportation~~
34 ~~Improvement Program under G.S. 143B-350(f)(4).~~

35 (c2) Distribution of State Funds Made Available by County or Municipal Participation. –
36 Any State or federal funds allocated to a project that are made available by county or municipal
37 participation in a project contained in the Transportation Improvement Program under
38 G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to
39 under the distribution formula contained in G.S. 136-17.2A.

40 ~~(c3) Limitation on Agreements. — The Department shall not enter into any agreement~~
41 ~~with a county or municipality to provide additional total funding for highway construction in~~
42 ~~the county or municipality in exchange for county or municipal participation in any project~~
43 ~~contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).~~

44 (d) Authorization to Participate in Development-Related Improvements. – When in the
45 review and approval by a local government of plans for the development of property abutting a
46 State transportation system it is determined by the municipality that improvements to the State
47 highway system are necessary to provide for the safe and orderly movement of traffic, the local
48 government is authorized to construct, or have constructed, said improvements to the State
49 transportation system in vicinity of the development. For purposes of this section,
50 improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter,
51 drainage facilities, and other transportation system improvements. All improvements to a State

1 transportation system shall be constructed in accordance with the specifications and
2 requirements of the Department of Transportation and be approved by the Department of
3 Transportation.

4 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement with
5 the Department of Transportation, a county or municipality may reimburse the Department of
6 Transportation for the cost of all improvements, including additional right-of-way, for a street,
7 highway improvement projects, or other transportation system improvements approved by the
8 Board of Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements
9 that the Department of Transportation would normally include in the project.

10 (e1) Reimbursement Procedure. – Upon request of the county or municipality, the
11 Department of Transportation shall allow the local government a period of not less than three
12 years from the date construction of the project is initiated to reimburse the Department their
13 agreed upon share of the costs necessary for the project. The Department of Transportation
14 shall not charge a local government any interest during the initial three years.

15 (f) Report to General Assembly. – The Department shall report in writing, on a
16 monthly basis, to the Joint Legislative Commission on Governmental Operations on all
17 agreements entered into between counties, municipalities and the Department of
18 Transportation. The report shall state in summary form the contents of such agreements.

19 (g) Local Government Acquisition of Rights-of-Way. – In the acquisition of
20 rights-of-way for any State street, highway, or other transportation project, the county or
21 municipality shall be vested with the same authority to acquire such rights-of-way as is granted
22 to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way,
23 counties and municipalities may use the procedures provided in Article 9 of this Chapter, and
24 wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to
25 include "county," "municipality" or local governing body, and wherever the words
26 "Administrator," "Administrator of Highways," "Administrator of the Department of
27 Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they
28 shall be deemed to include "county or municipal clerk". It is the intention of this subsection that
29 the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be
30 in addition to and supplementary to those powers granted in any local act or in any other
31 general statute, and in any case in which the provisions of this subsection or Article 9 of this
32 Chapter are in conflict with the provisions of any local act or any other provision of any general
33 statute, then the governing body of the county or municipality may in its discretion proceed in
34 accordance with the provisions of such local act or other general statute, or, as an alternative
35 method of procedure, in accordance with the provisions of this subsection and Article 9 of this
36 Chapter.

37 (h) Department Authority Concerning Rights-of-Way. – In the absence of an
38 agreement, the Department of Transportation shall retain authority to pay the full cost of
39 acquiring rights-of-way where the proposed project is deemed important to a coordinated State
40 transportation system.

41 (i) Changes to Local Government Participation Agreement. – Either the local
42 government or the Department of Transportation may at any time propose changes in the
43 agreement setting forth their respective responsibilities by giving notice to the other party, but
44 no change shall be effective until it is adopted by both the municipal governing body and the
45 Department of Transportation.

46 (j) Local Governments Party to Rights-of-Way Proceeding. – Any municipality that
47 agrees to contribute any part of the cost of acquiring rights-of-way for any State transportation
48 system shall be a proper party in any proceeding in court relating to the acquisition of such
49 rights-of-way.

50 (k) Repealed by Session Laws 2008-180, s. 6, effective August 4, 2008."

51 **SECTION 11.** G.S. 136-89.189 reads as rewritten:

"§ 136-89.189. Turnpike Authority revenue bonds.

The Authority shall be a municipality for purposes of Article 5 of Chapter 159 of the General Statutes, the State and Local Government Revenue Bond Act, and may issue revenue bonds pursuant to that Act to pay all or a portion of the cost of a Turnpike Project or to refund any previously issued bonds. In connection with the issuance of revenue bonds, the Authority shall have all powers of a municipality under the State and Local Government Revenue Bond Act, and revenue bonds issued by the Authority shall be entitled to the protection of all provisions of the State and Local Government Revenue Bond Act.

Except as provided in this section, the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act, apply to revenue bonds issued by the Turnpike Authority.

(1) The term of a lease between the Turnpike Authority and the Department executed prior to July 27, 2009 for all or any part of a Turnpike Project may exceed 40 years, as agreed by the Authority and the Department.

(2) The maturity date of a refunding bond may extend to the earlier of the following:

a. Forty years from the date of issuance of the refunding bond.

b. The date the Turnpike Authority determines is the maturity date required for the Turnpike Project funded with the refunding bonds to generate sufficient revenues to retire the refunding bonds and any other outstanding indebtedness issued for that Project. The Authority's determination of the appropriate maturity date is conclusive and binding. In making its determination, the Authority may take into account appropriate financing terms and conventions."

SECTION 12. G.S. 136-176(a5) is repealed.

Current text of G.S. 136-176(a5):

(a5) *The Department shall report to the Joint Legislative Transportation Oversight Committee, on or before September 1, 2003, on its intended use of funds pursuant to subsection (a3) of this section. The Department shall report to the Joint Transportation Appropriations Subcommittee, on or before May 1, 2004, on its actual current and intended future use of funds pursuant to subsection (a3) of this section. The Department shall certify to the Joint Legislative Transportation Oversight Committee each year, on or before November 1, that use of the Highway Trust Fund cash balances for the purposes listed in subsection (a3) of this section will not adversely affect the delivery schedule of any Highway Trust Fund projects. If the Department cannot certify that the full amounts authorized in subsection (a3) of this section are available, then the Department may determine the amount that can be used without adversely affecting the delivery schedule and may proportionately apply that amount to the purposes set forth in subsection (a3) of this section.*

SECTION 13. G.S. 143B-348 reads as rewritten:**"§ 143B-348. Department of Transportation – head; rules, regulations, etc., of Board of Transportation.**

The Secretary of Transportation shall be the head of the Department of Transportation. He shall carry out the day-to-day operations of the Department and shall be responsible for carrying out the policies, programs, priorities, and projects approved by the Board of Transportation. He shall be responsible for all other transportation matters assigned to the Department of Transportation, except those reserved to the Board of Transportation by statute. Except as otherwise provided for by statute, the Secretary shall have all the powers and duties as provided for in Article 1 of Chapter 143B including the responsibility for all management functions for the Department of Transportation. The Secretary shall be vested with authority to adopt design criteria, construction specifications, and standards as required for the Department of Transportation to construct and maintain highways, bridges, and ferries. The Secretary or the Secretary's designee shall be vested with authority to promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

All rules, regulations, ordinances, specifications, standards, and criteria adopted by the Board of Transportation and in effect on July 1, 1977, shall continue in effect until changed by the Board of Transportation or the Secretary of Transportation. The Secretary shall have

1 complete authority to modify any of these matters existing on July 1, 1977, except as
2 specifically restricted by the Board. Whenever any such criteria, rule, regulation, ordinance,
3 specification, or standards are continued in effect under this section and the words "Board of
4 Transportation" are used, the words shall mean the "Department of Transportation" unless the
5 context makes such meaning inapplicable. All actions pending in court by or against the Board
6 of Transportation may continue to be prosecuted in that name without the necessity of formally
7 amending the name to the Department of Transportation."

8 **SECTION 14.** G.S. 143B-350(f)(4) reads as rewritten:

9 "(f) Duties of the Board. – The Board of Transportation has the following duties and
10 powers:

11 ...

- 12 (4) To approve a schedule of all major transportation improvement projects and
13 their anticipated cost ~~for a period of seven years into the future.~~ This
14 schedule is designated the Transportation Improvement Program; it must be
15 published and copies must be available for distribution. The document that
16 contains the Transportation Improvement Program, or a separate document
17 that is published at the same time as the Transportation Improvement
18 Program, must include the anticipated funding sources for the improvement
19 projects included in the Program, a list of any changes made from the
20 previous year's Program, and the reasons for the changes.

21 ..."

22 **SECTION 15.** G.S. 143B-350(f)(13) is repealed:

23 *current text of G.S. 143B-350(f)(13):*

24 "(f) Duties of the Board. – The Board of Transportation has the following duties and powers:

25 ...

- 26 (13) *To promulgate rules, regulations, and ordinances concerning all transportation functions*
27 *assigned to the Department."*

28 **SECTION 16.** G.S. 159-81(1) reads as rewritten:

29 **"§ 159-81. Definitions.**

30 The words and phrases defined in this section shall have the meanings indicated when used
31 in this Article:

- 32 (1) "Municipality" means a county, city, town, incorporated village, sanitary
33 district, metropolitan sewerage district, metropolitan water district, county
34 water and sewer district, water and sewer authority, hospital authority,
35 hospital district, parking authority, special airport district, special district
36 created under Article 43 of Chapter 105 of the General Statutes, regional
37 public transportation authority, regional transportation authority, regional
38 natural gas district, regional sports authority, airport authority, joint agency
39 created pursuant to Part 1 of Article 20 of Chapter 160A of the General
40 Statutes, a joint agency authorized by agreement between two cities to
41 operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike
42 Authority ~~created pursuant to described in~~ Article 6H of Chapter 136 of the
43 General Statutes, Statutes and transferred to the Department of
44 Transportation pursuant to G.S. 136-89.182(b), but not any other forms of
45 State or local government.

46 ..."

47 **SECTION 17.** This act is effective when it becomes law.